

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LARRY SMITH	:	NO. 1:10-CV-218
	:	
Petitioner,	:	
	:	OPINION AND ORDER
v.	:	
	:	
WARDEN, HOCKING CORRECTIONAL	:	
FACILITY,	:	
	:	
Respondent.	:	

This matter is before the Court on the Magistrate Judge's Report and Recommendation (doc. 9), to which no objections were filed. The Magistrate Judge recommends that Petitioner's petition for habeas relief be denied, and the Court ADOPTS and AFFIRMS the Magistrate Judge's report.

Petitioner filed a pro se petition for habeas corpus with respect to his 2008 convictions of robbery and theft from an elderly person, for which he was sentenced to five years for the robbery conviction and twelve months for the theft from an elderly person conviction, with the sentences to run concurrently (doc. 9). He presents three grounds for relief in his petition: (1) that the trial court erred by finding Petitioner guilty of robbery and theft, as those convictions were not supported by sufficient evidence, and the State failed to meet its burden of proof; (2) that the trial court erred by finding Petitioner guilty of robbery and theft, as those findings were contrary to the law and were against the manifest weight of the evidence; and (3) that the trial

court erred by overruling Petitioner's motion for acquittal under Ohio Criminal Rule 29, as the State failed to meet its burden of proof (doc. 1).

The Magistrate Judge determined that Ground One and Ground Three of the petition are without merit as there was sufficient evidence presented at trial for a reasonable trier of fact to find Petitioner guilty beyond a reasonable doubt, and thus Petitioner did not demonstrate that the Ohio Court of Appeals' decision was contrary to or an unreasonable application of federal law (doc. 9). Further, the Magistrate Judge concluded that Ground Two does not state a cognizable claim for federal habeas corpus relief as a federal court is not vested with the authority to consider whether Petitioner's convictions were against the manifest weight of evidence because that is a state-law claim, not an issue implicating the federal Constitution or the laws or treaties of the United States (doc. 9). Consequently, the Magistrate Judge recommends that Petitioner's petition be denied with prejudice; that a certificate of appealability not issue; and that the Court certify that any appeal would not be taken in good faith.

Having reviewed this matter pursuant to 28 U.S.C. § 636(b), the Court finds no clear error on the face of the record and, indeed, finds the Report and Recommendation to be thorough, well-reasoned, and correct. See Advisory Committee Notes to Fed. R. Civ. P. 72; Thomas v. Arn, 474 U.S. 140, 150 (1985) ("It does not

appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings"). Accordingly, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation in its entirety (doc. 9). Therefore, Petitioner's habeas corpus petition is DENIED WITH PREJUDICE. Further, the Court FINDS that a certificate of appealability should not issue with respect to the claims alleged in the petition because Petitioner has not stated a "viable claim of the denial of a constitutional right," and the issues presented are not "adequate to deserve encouragement to proceed further." Slack v. Daniel, 529 U.S. 473, 475 (2000).

Finally, the Court CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that, with respect to any application by Petitioner to proceed on appeal in forma pauperis, an appeal of this Order would not be taken in good faith, and therefore the Court DENIES Petitioner leave to appeal in forma pauperis. Fed. R. App. P. 24(a); Kincade v. Sparkman, 117 F.3d 949, 952 (6th Cir. 1997).

SO ORDERED.

Dated: July 12, 2011

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge